

### **Remarks**

Claims 1, 7-9, 15-17 and 23-32 are pending in this application. Of these, claims 1, 9 and 17 are independent claims.

Claims 1, 9 and 17 have each been amended to make absolutely clear that it is the automatic transmitting of the message over the wireless connection to the set of wireless communications devices that is conditional upon the new application being added to the group of applications. This amendment is supported by the former claim language. Accordingly, no new matter has been introduced by these amendments.

The Applicant acknowledges, with thanks, the Examiner's confirmation that the former rejection of certain claims under 35 U.S.C. 101 has been withdrawn.

In the Office Action, the Examiner rejected claims 1, 9, 17 and 25-32 under 35 U.S.C. 103(a) as unpatentable over US 2003/0204842 ("Chenelle") in view of US 6,502,124 ("Shimikawa") and US 2005/0125525 ("Zhou"). The Applicant traverses this rejection on three grounds. Firstly, the rejection has been improperly made. Secondly, no *prima facie* obviousness has been established in respect of any of the claims as amended. Thirdly, combination of Chenelle with Zhou is improper per MPEP 2145 because these two references teach away from their combination.

As to the first ground of traversal, attention is drawn to MPEP 2141(II)(A), which requires that, regardless of the rationale that is relied upon in support of a rejection under 35 U.S.C. 103, office personnel must resolve the Graham factual inquiries. That

is, the Examiner must: (a) determine the scope and content of the prior art; (a) enunciate the differences between the claimed invention and the prior art; and (c) resolve the level of ordinary skill in the pertinent art. These factual findings have been omitted in the present case. Further to the Examination Guidelines Update: Developments in the Obviousness Inquiry After *KSR v. Teleflex* published on September 1, 2010 in the Federal Register, Vol. 75, No. 169 at 53645 (first column):

“It remains Office policy that appropriate factual findings are required in order to apply the enumerated rationales properly. If a rejection has been made that omits one of the required factual findings, and in response to the rejection a practitioner or inventor points out the omission, Office personnel must either withdraw the rejection, or repeat the rejection including all required factual findings.”

In view of the Applicant's identification of the omission above, it is incumbent on the Examiner to withdraw the rejection or, if it is repeated, to provide all required factual findings.

As to the second ground of traversal of the rejection under 35 U.S.C. 103(a), i.e. that no *prima facie* obviousness has been established in respect of any of the claims, it is submitted that at least one limitation of the independent claims as amended is not shown by the identified portions of the cited references.

In particular, the Applicant contests any suggestion that the limitation “wherein

said automatically transmitting said message over said wireless connection to said set of wireless communications devices is conditional upon said new application being added to a group of applications associated with the selected one of said predefined groups of wireless communications devices” is shown in the referenced portions of the cited art.

At page 4 of the Office Action, with respect to claim 1, the Examiner suggested that the above-referenced limitation, prior to its amendment herein to expressly recite “said message over said wireless connection to said set of wireless communications devices,” was disclosed at paragraphs 0015, 0017, 0021, 0024 and 0026 of Zhou. However, close examination of those paragraphs reveals that no such limitation is actually shown. All that is stated in those paragraphs in respect of messages is that the message broker 116 publishes messages to client systems that are listening in to registered channels (see paragraph 0017, second sentence). Zhou defines “channel” as “a group of client system users 104, 106 that share common software and/or file requirements” (see paragraph 0015). Pursuant to that definition, Zhou’s software and/or file requirements are shared by a group of client system users. Yet this fact says nothing of whether the software comprises applications and if so, whether the applications are organized in groups.

Moreover, even if groups of applications were disclosed in Zhou (which is denied) and if publishing in Zhou could be compared to transmitting a message (which is unclear), Zhou does not state that the publishing is conditional upon a new application being added to a group of applications associated with a selected group of

wireless communications devices, as required. To the contrary, Zhou actually appears to contemplate a "broadcast" methodology whereby new messages regarding updates, versions, software, are sent to all client systems, rather than to a subset of devices, and wherein the responsibility for determining whether the message is relevant to the user falls upon an intelligent agent at each client system. For the reasons that are set forth below, it is submitted that this methodology of Zhou provides little incentive for any transmitting of messages to be conditional upon a new application being added to a group of applications associated with a selected group of wireless communications devices.

FIG. 2 of Zhou describes operation of an intelligent agent at a client system of Zhou's software and file distribution management system. As described in Zhou paragraph 0029, at step 206 of FIG. 2, the intelligent agent at the client system determines that a new message (e.g. new update, version, software) is received. It is only after step 206 is performed that operation can ultimately proceed to step 212 of FIG. 2, wherein a determination is made as to whether the client system is to be notified of the new message. In some cases it may be determined in step 212 that notification is unnecessary, e.g. if "the new software/file or updated software/file does not appear in the user's channel of required software or files" (see Zhou paragraph 0030). The latter language is understood to mean that the client is not notified of receipt of the message if the software/file is determined not to be relevant to the user. In that case, the "no" path emanating from decision box 212 returns control to 204, i.e. the intelligent agent takes no further action in respect of the received message (e.g. it "drops" the message)

and returns to listening to registered channels.

Based on this understanding of Zhou, it would be illogical for the messaging of that reference to be conditional upon a new application being added to a group of applications associated with a select group of wireless communications devices of a plurality of such groups, as the Examiner has suggested. The reason is that, if Zhou's system is already configured to broadcast "new software" messages so that each client system can ascertain for itself whether the message is relevant, then it makes little sense for the sending of any message to be conditional upon a new application being added to a group of applications associated with the selected one of said predefined groups of wireless communications devices in accordance with claim 1 (as well as each of the other independent claims 9 and 17). The latter would imply a targeted messaging approach that is contrary the "broadcast" approach of Zhou.

Turning to the third ground of traversal, namely that combination of Chenelle with Zhou is improper per MPEP 2145 because these two references teach away from their combination, the Applicant has already commented above upon the fact that Zhou appears to adopt a "broadcast" messaging methodology whereby new messages regarding updates, versions, software, are sent to all client systems and wherein the responsibility for determining whether the message is relevant to the user falls upon an intelligent agent at each client system. In contrast, Chenelle sends its client notifications to a targeted group of client computers (see, e.g., Chenelle, paragraph 0035 first sentence and paragraph 0048 first sentence). The rationale for this approach

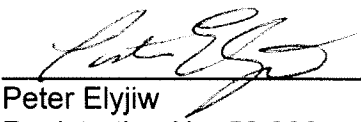
may be a desire to avoid unnecessarily notifying client computers having no use for a particular program of a new or updated version of that program. Whatever the rationale, the Zhou and Chenelle references teach away from one another in that respect. "It is improper to combine references where the references teach away from their combination" (MPEP 2145: *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)).

For all of the reasons set forth above, the Applicant requests withdrawal of the rejection of claim 1 under 35 U.S.C. 103(a). Further, because the other two pending independent claims 9 and 17 recite similar limitations to those of claim 1 as noted above, the Applicant also requests withdrawal of the corresponding rejection of those claims. Moreover, the Applicant's reasoning applies equally to dependent claims 25-32, by logical implication.

All of the remaining claims were rejected under 35 USC 103(a) as unpatentable over Chenelle, Shimikawa and Zhou in view of either US 2005/0055687 ("Mayer") or US 2005/0154759 ("Hofmeister"). However, because each of those rejections builds upon the rejection of the independent claims from which they depend (in respect of which certain features have been shown to be absent) no *prima facie* obviousness has been demonstrated for any of those claims. There is no evidence that that the feature(s) missing from the base claims can be found in Mayer or Hofmeister. Indeed, all three grounds of traversal enumerated above apply equally to these claims.

In view of the foregoing, favorable reconsideration and allowance of the application are earnestly solicited.

Respectfully submitted,

  
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